

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CECILIA BAILEY o/b/o	:	CIVIL ACTION
ANGELO JALEN BAILEY,	:	
Plaintiff,	:	
	:	
V.	:	
	:	
JO ANNE BARNHART,	:	
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
Defendant.	:	NO. 02-8413

**OPINION AND ORDER**

Clarence C. Newcomer, S.J.

October , 2003

**I. Introduction**

Angelo Bailey ("Plaintiff"), by and through his adoptive mother, Cecilia Bailey, seeks judicial review, pursuant to 42 U.S.C. §§ 405(g) and 1383(c), of the final decision of the Commissioner of the Social Security Administration denying his claim for child's supplemental security income (SSI) under title XVI of the Social Security Act (Act). Currently before the Court are Parties' Cross Motions for Summary Judgment. For the following reasons, the Defendant's Motion shall be granted and the Plaintiff's motion shall be denied.

**II. Procedural History**

On March 19, 2002, the administrative law judge (ALJ) issued a decision, finding Angelo did not have an impairment or combination of impairments that resulted in marked and extreme functional limitations; therefore, Angelo was not considered

disabled under the Act. Angelo requested that the Appeals Council review the ALJ's decision, but no basis for changing that decision was found. Thus, the ALJ's decision became the final decision of the Commissioner subject to judicial review pursuant to 42 U.S.C. § 405(g). This appeal followed.

### **III. Facts**

#### **A. Personal History and Background**

Plaintiff Angelo Bailey was born on April 20, 1997. He was four years old at the time of the ALJ's decision. Angelo has lived with his adoptive mother, Cecilia Bailey, since he was five months old.

#### **B. Medical History**

Angelo has been medically evaluated since he was nine months old. At nine months, Angelo could pull himself up to stand, sit well, cruise, crawl/creep, and perform other basic functions. When Angelo was fifteen months old, an evaluation revealed he was friendly, could walk alone, and drink from a cup. On August 16, 1998, Angelo was tested for HIV infection by Mark Bagrazzi, M.D. This HIV test along with a follow up exam one year later were both negative. Dr. Bargarazzi noted that Angelo was "active, playful, and well appearing." A neurological examination at this time was normal and Dr. Bargarazzi found that

Angelo was "developing normally."

On May 22, 2000, a Well Child Exam was completed at the Abbottsford/Schuylkill Falls Community Center because Angelo's mother was concerned about his hyperactivity. Even though all test results were negative, Angelo was referred to the Elwyn Institute for testing of a hyperkinetic disorder. An Early Intervention Report (EIP) from Elwyn, a Philadelphia Pre-School Early Intervention Program, showed that Angelo had delays in social-emotional development, gross motor skills, fine motor skills, cognition skills, and receptive and expressive language. Angelo was easily distracted while attempting new tasks, had a short attention span, and showed a tendency to act impulsively. The Institute recommended a structured and language based learning system, which would need to include a low teacher/child ratio and speech/language therapy.

At the request of the Commissioner, Marvin Feigenberg, Ed.D., examined Angelo on February 1, 2001. Dr. Feigenberg noted that Angelo was easily distracted, but had become less aggressive at school and at home in recent months. He also concluded that Angelo's delay in speech was no longer a problem, and gave Angelo an I.Q. test, which placed Angelo in the borderline range of intellectual functioning. Dr. Feigenberg concluded that Angelo's major difficulties were social development, concentration, and task persistence. He diagnosed Attention Deficit Hyperactivity

Disorder (ADHD) and Borderline Intelligence.

Following this evaluation, a state agency medical consultant found that Angelo's impairments were severe, but did not meet, medically equal, or functionally equal the listings.<sup>1</sup> Then, on February 12, 2001, Beth Parrish, M.D., evaluated Angelo at the request of his mother. Angelo's mother again reported him to be "hyper" and that he had stool incontinence two to three times per week. Angelo's mother did note that his aggressive behavior has calmed down. Dr. Parrish noted Angelo had a heart murmur and microcephaly.<sup>2</sup> In addition, she observed Angelo to be pleasant and extremely active. She found that Angelo's behavior place him "at risk" for a diagnosis of ADHD. However, she was reluctant to label a child so young. Dr. Parrish recommended Angelo continue in the Warren E. Smith Early Intervention Center program that he had been enrolled in since December 2000. These services were discontinued in May 2001 due to Angelo's family's relocation.

On August 17, 2001, a psychiatric evaluation at the Eastern Pennsylvania Psychiatric Institute was completed by Paul Ambrosini, M.D. Angelo's mother reported Angelo's aggressiveness was increasing and that Dr. Parrish had previously diagnosed

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<sup>1</sup> The listings are found in 20 C.F.R. § 416.926.

<sup>2</sup> Microcephaly is defined as "abnormal smallness of the head often seen in mental retardation."

Angelo with ADHD. Even though Dr. Parrish had not diagnosed Angelo with ADHD, ADHD reports were obtained. Angelo placed in the borderline range for ADHD. Dr. Ambrosini diagnosed Angelo with ADHD, combined type and placed Angelo on medication. According to Angelo's mother, the medication is somewhat effective.

#### **IV. Discussion**

##### **A. Standard of Review**

The role of this Court upon judicial review is to determine if substantial evidence in the administrative record supports the Commissioner's final decision. See Stunkard v. Sec'y of Health and Human Serv., 841 F.2d 57, 59 (3d Cir. 1988). Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citations omitted). It is more than a mere scintilla of evidence but may be less than a preponderance. See Stunkard, 841 F.2d at 59. In order to determine whether a finding is supported by substantial evidence, however, the reviewing tribunal must review the record as a whole. See 5 U.S.C. § 706. When the Commissioner is confronted with conflicting evidence, he must adequately explain in the record the reasoning for rejecting or discrediting otherwise competent evidence. Sykes v. Apfel, 228

F.3d 259 (3d Cir. 2000).

**B. Burden of Proof**

Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on August 22, 1996. See 42 U.S.C. § 1382(a)(3)(C). The Act amended the statutory standard such that children seeking SSI benefits due to a disability must demonstrate a medically determinable impairment "which results in marked and severe functional limitations," and which meets the statutory duration requirement of 12 months. Id. The Social Security Administration published interim final rules to implement the childhood disability provisions of the 1996 Act on February 11, 1997. See 62 Fed. Reg. 6408; 20 C.F.R. §§ 416.902, 416.906, 416.924(a) (2000). These rules articulated a new three-step sequential evaluation process pursuant to which a qualifying claimant must demonstrate: (1) that he or she is not working; (2) that he or she has a "severe" impairment or combination of impairments; and (3) that his or her impairment or combination of impairments is of "listing-level" severity, which essentially means that the impairment meets, medically equals, or functionally equals the severity of an impairment in the Listings of Impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1, Regulations No. 4; 20 C.F.R. § 416.924 (2000).

**C. Review of the Administrative Law Judge's Opinion**

The Plaintiff seeks a reversal of the ALJ's decision to deny benefits and remand for action consistent with a favorable decision.

Plaintiff argues that the ALJ erred in evaluating probative evidence and as a result, did not meet the Third Circuit Court of Appeals' standard of substantial evidence. This Court disagrees, and finds that the ALJ's decision was supported by substantial evidence.

**The ALJ's Finding Is Supported by Substantial Evidence**

The Plaintiff argues that the ALJ's decision should be reversed because the ALJ's denial of benefits is not supported by substantial evidence. The ALJ determined that Angelo's ADHD and mild development delays were severe impairments. However, Plaintiff claims that the ALJ incorrectly held that the limitations resulting from the effects of the Angelo's impairments do not meet, medically equal, or functionally equal the criteria of any of the listed impairments.

The ALJ correctly determined that Angelo's impairments do not meet or medically equal the listings. To meet the listings, Angelo would have had to show that his impairments met the requirements of the applicable listing. 20 C.F.R. § 416.926.

The ALJ specifically considered Listing 112.11, relating to ADHD, but found no evidence of inattention, impulsiveness, and hyperactivity at the "marked" level. The ALJ also noted that the most recent medical findings from examining physicians do not warrant a "marked" level conclusion. The medical evidence is contrary to Plaintiff's claim of a "marked" limitation, therefore, the ALJ's findings are supported by substantial evidence.

The next consideration by the ALJ is whether Angelo's severe impairment or combination of impairments functionally equals a listed impairment. A severe impairment or combination of impairments may functionally equal a listed impairment if it results in "marked" limitations in two domains of functioning or an "extreme" limitation in one domain.<sup>3</sup> See 20 C.F.R. § 416.92a(a). The ALJ found that Angelo does not have "marked" limitations in more than one domain of functioning, nor does he have an "extreme" limitation in one domain. The ALJ's findings are consistent with the medical evidence and the statutory definitions provided in 20 C.F.R. §§ 416.926a, 416.902. Therefore, substantial evidence is present to support these ALJ findings.

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<sup>3</sup> The six domains are as follows: (1) acquiring and using information; (2) attending and completing tasks; (3) interacting and relating to others; (4) moving about and manipulating objects; (5) caring for oneself; and (6) health and physical well being. See 20 C.F.R. § 416.926a(b)(1)(i)-(vi).

Finally, the Plaintiff claims that the ALJ erroneously focused on Angelo's accomplishments rather than his failures. The ALJ considered the appropriate factors, which encompass both accomplishments and failures, as outlined in 20 C.F.R. § 416.924a(b)(3)-(9). Upon consideration of these factors and medical evidence, the ALJ correctly evaluated Angelo's impairments under the six domains of 20 C.F.R. § 416.926a(b)(1)(i)-(vi).

**V. Conclusion**

For the foregoing reasons, the Court finds that the ALJ's decision is substantially supported and that the ALJ did not fail to consider any relevant evidence. Accordingly, the Court will grant summary judgment in favor of the Defendant. An appropriate order will follow.

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Clarence C. Newcomer, S.J.

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SECURITY,	:	
Defendant.	:	NO. 02-8413

O R D E R

AND NOW, this        day of October, 2003, upon  
consideration of the Parties' Cross Motions for Summary Judgment,  
it is hereby ORDERED that the Defendant's Motion for Summary  
Judgment is GRANTED, the Plaintiff's Motion for Summary Judgment  
is DENIED, and judgment is entered in favor of the Defendant.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.